IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 31 OF 2005

IN

SUIT NO. 1212 OF 1991

Narayan Manik Patil .. Plaintiff.

vs.

Jaywant Jagannath Patil

& Ors. .. Defendants.

Mr. N.K. Mudnaney for plaintiff.

Mr. H. Tur i/by A. L. N. Khatri & Co.

for Defendant No. 1.

Mr. Pankaj Kansara for D.Nos. 56 to 60.

Mr. V. Naik i/by M. Dabhade for D. No. 61.

Mr. V.M. Kantawala for applicant/Intervenors

Mr. U.B. Nigot for D. Nos. 7, 11, 45, 46.

CORAM : S.U. KAMDAR,J.

DATE : 23rd FEBRUARY, 2005.

P.C.

1. The learned counsel appearing for the applicant makes a statement that he is deleting item no. A1 and A3 from the schedule annexed to the

affidavit in support of the chamber summons at pages 41 and 42 thereof.

2. The present chamber summons is taken out for amendment of the plaint for seeking to add certain Bombay properties on the ground that the same belong to the joint family and are required to be partitioned. The suit has been filed by the plaintiffs for partition of certain joint family properties.

3. The present application has been made by the newly added defendant no. 61. It is his case that the properties which are set out in the schedule annexed to the affidavit in support of the chamber summons are joint family properties and are, therefore, required to be added in Exhibit "E" to the plaint which gives description of various other joint family properties.

4. The learned counsel appearing for the defendant no. 1 has strongly contended that the present amendment should not be granted. According to him, the said properties are self-acquired properties of the father of the defendant no. 1 and do not belong to the joint family properties and, therefore, the same could not be incorporated in Exhibit "E" to the plaint. He has further contended that the defendant no. 61 has no locus to apply by

way of the present chamber summons because the mother of defendant no. 1 has already married in 1934 and is claiming right, title and interest through his mother who herself had no right since she was married in 1934 and the married women prior to 1956 did not have any right in respect of the properties of joint family. The third contention raised by the larned counsel for the defendant no. 1 is that the certain properties which are subject matter of the schedule are already been sold and the remaining being self-acqired properties of defendant no. 1's father the same should not be incorporated. The learned counsel for the defendant no. 1 seeks that I should determine the status of the properties which are sought to be added and mentioned at page nos. 41-42 of the Schedule annexed to the affidavit in support of the chamber summons at this stage and decide whether the said properties are the joint family properties or are the self-acquired properties.

5. I am unable to accept the contention of the learned counsel for the defendant no. 1 because it is not possible for me to examine and determine the issue whether the properties are joint family properties of a Hindu Undivided family or self-acquired properties of defendant no. 1. It goes without saying that the determination of the said issue requires trial. The same has to be

determined at the hearing of the suit by leading evidence by the rival parties. It is not possible under Order 6 Rule 17 to come to any such conclusion one way or the other whether the said properties are self-acquired properties and/or are the joint family properties. I am unable even to come to such a conclusion prima facie and to dismiss the present chamber summons and shut out the case of the defendant no. 1 that the said properties are joint family properties. It is undoubtedly open for the defendant no. 1 to agitate the said issue by filing necessary written statement and the said issue can be determined only at the trial of the suit. In view of the fact that the properties at Item No. A1 and A3 are deleted from the schedule of the chamber summons, the issue that the said properties are already sold and therefore cannot be incorporated in the suit does not survive. The defendants will be entitled to file additional written statement to the present amendment within a period of three months from today. All issues and contentions on merits are kept open. The said properties will be added in Exhibit - E as Part III of the said Exhibit - E. Time to add the defendant no. 61 by way of amendment is extended by one week.